

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 * * *

11 GERALD HESTER, on behalf of himself and)
12 all others similarly situated,)

13 Plaintiff,)

14 vs.)

15 VISION AIRLINES, INC.,)

16 Defendant.)
_____)

Case No.: 2:09-cv-00117-RLH-RJJ

ORDER

(Motion to Disqualify Hester as Class
Representative #120)

17 Before the Court is Defendant Vision Airlines, Inc.'s **Motion to Disqualify Hester**
18 **as Class Representative** (#120), filed April 30, 2010. The Court also considered Plaintiff Gerald
19 Hester's Response (#126), filed May 17, 2010, and Vision's Reply (#129), filed May 27, 2010.
20 Finally, the Court considered Hester's **Motion for Leave to File Sur-Reply** (#130), filed June 1,
21 2010.

22 **BACKGROUND**

23 This is a class action lawsuit in which Plaintiff Gerald Hester alleges Defendant
24 Visions Airlines failed to make required hazard payments to its employees who flew to Baghdad,
25 Iraq and Kabul, Afghanistan from 2005 to the present. For a more detailed account of the facts of
26 \

1 this case, the Court refers the reader to its September 15, 2010 Order (#159). For the reasons
 2 discussed below, Vision's and Hester's motions are denied.

3 DISCUSSION

4 I. Adequacy of Class Representative

5 Vision has not presented any evidence showing that the Class should be decertified.
 6 "[T]o prevail on its decertification motion, defendant faces a heavy burden because doubts
 7 regarding the propriety of class certification should be resolved in favor of certification."
 8 *Gonzales v. Arrow Fin. Servs. LLC*, 489 F. Supp. 2d 1140, 1154 (S.D. Cal. 2007). Vision must,
 9 therefore, show that certification is no longer appropriate. *See id.* To determine whether
 10 continued certification is proper, the Court applies the same standard that it originally applied to
 11 grant certification, namely the requirements of Fed. R. Civ. P. 23. *O'Connor v. Boeing N. Am.,*
 12 *Inc.*, 197 F.R.D. 404, 410 (C.D. Cal. 2000). While the Court must treat the substantive allegations
 13 of the complaint as true, it may, nonetheless, "consider evidence which goes to the requirements of
 14 Rule 23" even if that evidence also relates to the merits of the case. *Hanon v. Dataproducts Corp.*,
 15 976 F.2d 497, 509 (9th Cir. 1992). Rule 23(a) requires: (1) numerosity; (2) commonality; (3)
 16 typicality; and (4) adequacy of representation. In addition to meeting these four requirements, one
 17 of the Rule 23(b) requirements must also be met. The Rule 23(b) requirement at issue requires
 18 that common questions of law or fact "predominate over any questions affecting individual
 19 members, and that a class action is superior to other available methods" for settling the dispute.

20 Vision bases its arguments on Hester not having sufficient factual information
 21 about the case. This is an attack on the fourth Rule 23(a) requirement, adequacy of representation.
 22 The Court will not revisit the other requirements.

23 Vision argues that Hester is an inadequate class representative because he did not
 24 know or believe that he was entitled to hazard pay until after talking to his attorneys and because
 25 he didn't know or gather much of the information in the complaint. However, the law does not
 26 require the class representative to have such detailed knowledge. "The threshold of knowledge

1 required to qualify a class representative is low; a party must be familiar with the basic elements of
 2 [his or] her claim,” no more. *Moeller v. Taco Bell Corp.*, 220 F.R.D. 604, 611 (N.D. Cal. 2004).
 3 The record sufficiently demonstrates that Hester has a general and sufficient understanding of the
 4 claim. Hester may not have known detailed information about the facts underlying the claim, but
 5 the discovery process has provided Vision with sufficient information to mount a defense in this
 6 case. Since Vision has not shown an adequate reason to decertify the Class, the Court denies
 7 Vision’s motion.

8 **II. Adequacy of Class Counsel**

9 Vision has not presented any legal basis or evidence showing that Class counsel is
 10 inadequate. Vision argues that because an absent Class member, Gary von Borck, is the father of
 11 one of the Class’ attorneys, Brett von Borck, Class counsel is inadequate. There is no basis for this
 12 argument in the law. Courts may be concerned when there is a close relationship, especially
 13 familial, between lead counsel and a class representative, *Susman v. Lincoln Am. Corp.*, 561 F.2d
 14 86, 91 (7th Cir. 1977), but that is not the situation presented to the Court. Here, the only familial
 15 relationship is between an associate working on the case and an absent Class member. Their
 16 relationship does not concern the Court because neither controls the direction of this litigation.
 17 The Court will not disqualify Brett von Borck or any other individual as class counsel on this
 18 basis.

19 **III. Other Requests**

20 Vision makes further requests of the Court such as permission to depose absent
 21 class members, permission to depose class counsel, and other requests. Vision has not shown
 22 adequate grounds for such extreme measures. Further, any issue as to attorney’s fees will be
 23 handled after trial, if necessary. The Court, therefore, denies these requests.

24 In light of the foregoing decisions, Hester’s Motion for Leave to File Sur-Reply is
 25 now moot. The Court therefore denies the motion as moot.

26 \

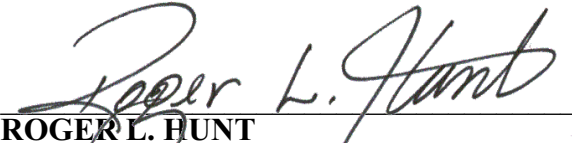
CONCLUSION

Accordingly, and for good cause appearing,

IT IS HEREBY ORDERED that Vision's Motion to Disqualify Hester as Class Representative (#120) is DENIED.

IT IS ALSO HEREBY ORDERED that Hester's Motion for Leave to File Sur-Reply (#130) is DENIED.

Dated: September 16, 2010


ROGER L. HUNT
Chief United States District Judge